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IN THE

Supreme Court of the United States

October Term, 1936

TEXTILE MACHINE WORKS,
Petitioner,

vs.

LOUIS HIRSCH TEXTILE MACHINES, INC.,
Respondent.

No. 62

MEMORANDUM OF RESPONDENT ON PETITION FOR WRIT OF CERTIORARI.

SAMUEL E. DARBY, JR.,
Counsel for Respondent.

IN THE

Supreme Court of the United States

October Term, 1936

TEXTILE MACHINE WORKS,
Petitioner,

vs.

LOUIS HIRSCH TEXTILE MACHINES, INC.,
Respondent.

No. 993

MEMORANDUM OF RESPONDENT ON PETITION FOR WRIT OF CERTIORARI.

It is correct, as recited in the petition for writ of certiorari, that the Circuit Court of Appeals for the Second Circuit, in an opinion written by Judge LEARNED HAND, invalidated claims 1, 3, 14, and 15 of Letters Patent No. 1,713,628 (87 Fed. (2d) 702), and that prior thereto the Court of Appeals for the Third Circuit, in an opinion written by Judge BUFFINGTON, the same claims of the patent had been held to be valid.

However, respondent feels it is charged with the duty of pointing out to this Court:

(1) The record before the Court of Appeals for the Second Circuit was different in many important respects from that before the Court of Appeals for the Third Circuit; new defenses were presented; and additional and clarifying evidence of a most

persuasive nature was adduced bearing on some of the defenses which had been presented in the Third Circuit case (see *Smith* v. *Hall*, 81 L. Ed. 648).

(2) The case in the Third Circuit (*Textile Machine Works* v. *Alfred Hofmann, Inc.*) has been settled, and a final decree entered therein. So far as can be ascertained from the records in the Patent Office, and so far as we know, there is no pending litigation on the patent which would be affected by the decision of this Court in the event a certiorari is granted.

Conclusion.

If, in view of the foregoing, a review of the present case is deemed by this Court to be appropriate, respondent does not oppose the grant of certiorari and is prepared to convince this Court of the soundness of the decision of the Court of Appeals for the Second Circuit.

Respectfully submitted,

SAMUEL E. DARBY, JR.,
Counsel for Respondent.

Dated: New York, N. Y.
May 21, 1937.

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Respondent.

BRIEF FOR RESPONDENT.

SAMUEL E. DARBY, JR.,
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Counsel for Defendant.

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TEXTILE MACHINE WORKS,
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Respondent.

ON CERTIORARI TO THE CIRCUIT COURT OF APPEALS OF THE SECOND CIRCUIT.

BRIEF FOR RESPONDENT.

This cause is here on writ of certiorari issued to the Circuit Court of Appeals for the Second Circuit in a patent infringement suit involving claims 1, 3, 14 and 15 of Schletter Patent No. 1,713,628, issued May 21, 1929, on an application filed November 5, 1925.

The Second Circuit Court of Appeals declared these claims of the patent to be invalid expressly for want of invention and impliedly for want of disclosure of the invention claimed, thereby reaching a conclusion, on the record before it, different from that reached by the Court of Appeals for the Third Circuit in a prior litigation involving

the patent entitled *Textile Machine Works* v. *Alfred Hofmann, Inc.*, originating in the District Court of New Jersey.

In the *Hofmann* case, Judge Avis, who up to the time of the trial had had little, if any, experience in patent matters, found the same claims of the Schletter patent to be valid and infringed (4 Fed. Supp. 837). The Court of Appeals for the Third Circuit, just prior to its summer recess, per Judge Buffington, affirmed the decree of Judge Avis in an opinion which neither mentioned nor discussed the specific defenses or the issues raised by the appeal (71 Fed. (2d) 973).

As will be hereinafter pointed out, and by comparison with the record in the *Hofmann* case (here before the Court in the present case as Plaintiff's Exhibit 3) it will be seen, the structure here charged to infringe the patent is different in many important and vital respects from the defendant's structure in the *Hofmann* case. In consequence, the present case includes the defense of non-infringement, which issue was not before the Third Circuit courts. Moreover, new and controlling evidence is here presented bearing on the question of validity of the patent that was not before the Third Circuit courts, and there are several other important issues raised by the present record which were not raised or considered by the Third Circuit courts in the *Hofmann* case.

For convenience, petitioner and respondent will be hereinafter referred to, respectively, as plaintiff and defendant.

Subject Matter of the Patent.

The patent in suit is directed to certain mechanical instrumentalities attached to or forming part of *flat* or *straight* knitting machines such as are widely employed for

manufacturing *full fashioned* garments such as silk stockings, underwear, sweaters, etc.

The characteristic feature of a *flat* or *straight* knitting machine is that the garment is knitted in a *flat* condition *in one piece.* The terms "flat" or "straight" are used synonymously.

A *full fashioned* garment is one which, during the knitting thereof, is *shaped* by increasing or decreasing the width of the fabric to conform the shape thereof to the shape of that part of the body for which the garment is intended. For example, a full fashioned sweater is one that has been shaped during the knitting thereof, to the shape of the body. Thus, if the knitting of the sweater is started at the wide hip portion, it is "narrowed" at the waist portion, and again "widened" at the shoulder portion. Similarly, a full fashioned stocking is one that has been shaped, during the knitting thereof, to the shape of the leg, and hence is wider at and above the calf of the leg than it is at the ankle. Because a stocking is knit starting at the widest portion (at the top of the stocking) and is "fashioned" progressively towards the calf and ankle (the narrowest portion) only "narrowing" is necessary, and "widening", as is utilized in fashioning other garments, such as sweaters, underwear, etc., is dispensed with.

After a "fashioned" fabric is knitted in a single, flat and shaped piece, the edges are sewed together by a "seam" to form the completed garment.

Consequently, *a flat or straight full fashioned* knitting machine is one which is provided with mechanism for making a flat fabric wider or narrower as it is being knit.

Flat or straight knitting machines have been in use since 1864. Attachments for such machines for effecting "fashioning" either to "narrow" or "widen" the knitted garments have been in use and known for over sixty years.

The patent in suit purports to disclose certain mechanical instrumentalities attached to or forming part of a flat full fashioned knitting machine, *together with the necessary mechanism to render these instrumentalities operative.*

Figures 1 and 2 of the patent disclose, in assembled condition, these various instrumentalities. They consist essentially of a rotatable spindle 11, having "reverse" threads on opposite sides of its central point. In other words, the threads on one end of the spindle run in one direction, and the threads on the opposite end thereof run in an opposite direction.

Mounted on the respective ends of the spindle are two threaded nuts 9, with the result that when the spindle is rotated in one direction or the other the nuts move towards or away from each other. Carried by the nuts 9, to move therewith, are thread carrier stops 7 which are adapted to limit the travel of thread carrier rods 6 (see Fig. 2). These rods have mounted thereon thread carriers which supply the yarn which is operated upon by the needles of the machine to knit the fabric.

Thus, the sole purpose and function of the apparatus thus far described is to control, by means of the movable stops 7, the distance of travel of thread carrier rods—and hence control the length of yarn supplied to the needles by those thread carrier rods.

To enable the variation of thread carrier travel in both directions, *i. e.*, to increase or decrease the travel of the carrier rods, (viz: to move the stop nuts away from or toward each other), the spindle 11 is provided at its end with two ratchet wheels 21 and 22 and cooperating pawls 23 and 24, whereby, when one pawl actuates its complementary ratchet wheel the spindle will rotate in one direction, and when the other pawl actuates its complementary ratchet wheel the spindle will rotate in the opposite direction.

To render the variation "automatic" and effected by the power which actuates the entire knitting machine, so that such variation will occur during the fabrication of a complete stocking structure (for the purpose of making designs, etc.), mechanism is provided for imparting power to the pawls from the main cam shaft 5 of the knitting machine. The automatic feature is effected by means of two separate pattern chains, one shown at 50 and the other at 70. The pattern chains each consist of an endless belt on which are mounted "buttons". Step by step travel is imparted to the chain from the main cam shaft of the machine, and when the buttons mounted on the chain reach a certain part of the machine in their travel (for example, as shown in the patent in suit, when the buttons on pattern chain 50 reach the wheel 54) they actuate some lever or other type of mechanism to cause whatever mechanical operation may be desired. It will be seen, therefore, that by varying the number and position of the buttons any desired "pattern", design, or, for that matter, any desired mechanical operation is effected.

In the structure of the patent the buttons on the pattern chain 50 determine *when* the spindle 11 is to be rotated, and the buttons on the similar pattern chain 70 determine *in which direction* the spindle 11 is to be rotated by selecting which of the pawls and its complementary ratchet will be actuated.

Thus, the disclosure of the patent in suit may be briefly summed up as comprising a reversely threaded spindle with thread carrier rod stop nuts mounted thereon, with separate and independent pattern chain control means for automatically and selectively actuating the reversely threaded spindle in *either* direction.